

SENATE BILL No. 103

DIGEST OF INTRODUCED BILL

Citations Affected: IC 5-14-1.5; IC 8-1-2.2-31; IC 20-12; IC 23-13-18-28.

Synopsis: Serial meetings and electronic meetings. Provides that, absent express statutory authorization, a member of the governing body of a public agency who is not physically present at a meeting but communicates with other members of the governing body during the meeting by an electronic means of communication may not participate in a final action taken at the meeting or be considered to be present at the meeting. Allows the governing body of a state educational institution, the Ivy Tech board of trustees (and a committee of the board), the board of trustees of Vincennes University (and a committee of the board), and the governing body of a joint agency of a municipal utility program to conduct meetings by electronic means. Provides that members of the governing body who participate in a series of gatherings either in person or by electronic means (excluding electronic mail) violate the open door law if: (1) at least two but less than a quorum of members attend each gathering; (2) the total sum of different members attending all gatherings at least equals a quorum of the governing body; (3) all the gatherings concern the same subject matter and are held within a period of not more than seven days; and (4) the gatherings are held for the purpose of taking official action on public business.

Effective: July 1, 2007.

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January 8, 2007, read first time and referred to Committee on Local Government and Elections.

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First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

SENATE BILL No. 103

A BILL FOR AN ACT to amend the Indiana Code concerning state and local administration.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 5-14-1.5-3 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 3. (a) Except as
3 provided in section 6.1 of this chapter, all meetings of the governing
4 bodies of public agencies must be open at all times for the purpose of
5 permitting members of the public to observe and record them.
6 (b) A secret ballot vote may not be taken at a meeting.
7 (c) A meeting conducted in compliance with IC 5-1.5-2-2.5 does not
8 violate this section.
9 (d) **A member of the governing body of a public agency who is**
10 **not physically present at a meeting of the governing body but who**
11 **communicates with members of the governing body during the**
12 **meeting by telephone, computer, videoconferencing, or any other**
13 **electronic means of communication:**
14 (1) **may not participate in final action taken at the meeting**
15 **unless the member's participation is expressly authorized by**
16 **statute; and**
17 (2) **may not be considered to be present at the meeting unless**



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1 considering the member to be present at the meeting is
 2 expressly authorized by statute.

3 SECTION 2. IC 5-14-1.5-3.1 IS ADDED TO THE INDIANA
 4 CODE AS A NEW SECTION TO READ AS FOLLOWS
 5 [EFFECTIVE JULY 1, 2007]: Sec. 3.1. (a) The governing body of a
 6 public agency violates this chapter if members of the governing
 7 body participate in a series of at least two (2) gatherings of
 8 members of the governing body and the series of gatherings meets
 9 all of the following criteria:

10 (1) Each gathering is attended by at least two (2) members but
 11 less than a quorum of the members of the governing body.

12 (2) The sum of the number of different members of the
 13 governing body attending any of the gatherings at least equals
 14 a quorum of the governing body.

15 (3) All the gatherings concern the same subject matter and
 16 are held within a period of not more than seven (7) days.

17 (4) The gatherings are held to take official action on public
 18 business.

19 For purposes of this subsection, a member of a governing body
 20 attends a gathering if the member is present at the gathering in
 21 person or if the member participates in the gathering by telephone
 22 or other electronic means, excluding electronic mail.

23 (b) A gathering under subsection (a) does not include:

24 (1) a social or chance gathering not intended to avoid the
 25 requirements of this chapter;

26 (2) an onsite inspection of any project or program;

27 (3) traveling to and attending meetings of organizations
 28 devoted to the betterment of government;

29 (4) a caucus;

30 (5) a meeting between one (1) member of the governing body
 31 and at least one (1) other individual who is not a member of
 32 the governing body concerning public business; or

33 (6) a gathering to receive information about an industrial or
 34 commercial prospect that does not include a discussion of the
 35 terms of a request or an offer of public financial resources.

36 (c) A violation described in subsection (a) is subject to section 7
 37 of this chapter.

38 SECTION 3. IC 5-14-1.5-7 IS AMENDED TO READ AS
 39 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 7. (a) An action may be
 40 filed by any person in any court of competent jurisdiction to:

41 (1) obtain a declaratory judgment;

42 (2) enjoin continuing, threatened, or future violations of this

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chapter; or

(3) declare void any policy, decision, or final action:

(A) taken at an executive session in violation of section 3(a) of this chapter;

(B) taken at any meeting of which notice is not given in accordance with section 5 of this chapter;

(C) that is based in whole or in part upon official action taken at any:

(i) executive session in violation of section 3(a) of this chapter; ~~or at any~~

(ii) meeting of which notice is not given in accordance with section 5 of this chapter; or

(iii) series of gatherings in violation of section 3.1 of this chapter; or

(D) taken at a meeting held in a location in violation of section 8 of this chapter.

The plaintiff need not allege or prove special damage different from that suffered by the public at large.

(b) Regardless of whether a formal complaint or an informal inquiry is pending before the public access counselor, any action to declare any policy, decision, or final action of a governing body void, or to enter an injunction which would invalidate any policy, decision, or final action of a governing body, based on violation of this chapter occurring before the action is commenced, shall be commenced:

(1) prior to the delivery of any warrants, notes, bonds, or obligations if the relief sought would have the effect, if granted, of invalidating the notes, bonds, or obligations; or

(2) with respect to any other subject matter, within thirty (30) days of either:

(A) the date of the act or failure to act complained of; or

(B) the date that the plaintiff knew or should have known that the act or failure to act complained of had occurred;

whichever is later. If the challenged policy, decision, or final action is recorded in the memoranda or minutes of a governing body, a plaintiff is considered to have known that the act or failure to act complained of had occurred not later than the date that the memoranda or minutes are first available for public inspection.

(c) If a court finds that a governing body of a public agency has violated this chapter, it may not find that the violation was cured by the governing body by only having taken final action at a meeting that complies with this chapter.

(d) In determining whether to declare any policy, decision, or final

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1 action void, a court shall consider the following factors among other
2 relevant factors:

3 (1) The extent to which the violation:

4 (A) affected the substance of the policy, decision, or final
5 action;

6 (B) denied or impaired access to any meetings that the public
7 had a right to observe and record; and

8 (C) prevented or impaired public knowledge or understanding
9 of the public's business.

10 (2) Whether voiding of the policy, decision, or final action is a
11 necessary prerequisite to a substantial reconsideration of the
12 subject matter.

13 (3) Whether the public interest will be served by voiding the
14 policy, decision, or final action by determining which of the
15 following factors outweighs the other:

16 (A) The remedial benefits gained by effectuating the public
17 policy of the state declared in section 1 of this chapter.

18 (B) The prejudice likely to accrue to the public if the policy,
19 decision, or final action is voided, including the extent to
20 which persons have relied upon the validity of the challenged
21 action and the effect declaring the challenged action void
22 would have on them.

23 (4) Whether the defendant acted in compliance with an informal
24 inquiry response or advisory opinion issued by the public access
25 counselor concerning the violation.

26 (e) If a court declares a policy, decision, or final action of a
27 governing body of a public agency void, the court may enjoin the
28 governing body from subsequently acting upon the subject matter of
29 the voided act until it has been given substantial reconsideration at a
30 meeting or meetings that comply with this chapter.

31 (f) In any action filed under this section, a court shall award
32 reasonable attorney's fees, court costs, and other reasonable expenses
33 of litigation to the prevailing party if:

34 (1) the plaintiff prevails; or

35 (2) the defendant prevails and the court finds that the action is
36 frivolous and vexatious.

37 The plaintiff is not eligible for the awarding of attorney's fees, court
38 costs, and other reasonable expenses if the plaintiff filed the action
39 without first seeking and receiving an informal inquiry response or
40 advisory opinion from the public access counselor, unless the plaintiff
41 can show the filing of the action was necessary to prevent a violation
42 of this chapter.

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(g) A court shall expedite the hearing of an action filed under this section.

SECTION 4. IC 8-1-2.2-31 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 31. (a) This section applies to a meeting of the board of commissioners of a joint agency at which at least a quorum of the board is physically present at the place where the meeting is conducted.**

(b) A member of the board of commissioners of a joint agency may participate in a meeting of the board of commissioners by using a means of communication that permits:

(1) all other members participating in the meeting; and

(2) all members of the public physically present at the place where the meeting is conducted;

to simultaneously communicate with each other during the meeting.

(c) A member of the board of commissioners of a joint agency who participates in a meeting under subsection (b) is considered to be present at the meeting.

(d) The memoranda of a meeting of the board of commissioners of a joint agency prepared under IC 5-14-1.5-4 must state the name of:

(1) each member who was physically present at the place where the meeting was conducted;

(2) each member who participated in the meeting by using a means of communication described in subsection (b); and

(3) each member who was absent.

SECTION 5. IC 20-12-1-13 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 13. (a) This section applies to a meeting of the governing body of any state educational institution (as defined in IC 20-12-0.5-1) at which at least a quorum of the governing body is physically present at the place where the meeting is conducted.**

(b) A member of the governing body may participate in a meeting of the board by using a means of communication that permits:

(1) all other members participating in the meeting; and

(2) all members of the public physically present at the place where the meeting is conducted;

to simultaneously communicate with each other during the meeting.

(c) A member who participates in a meeting under subsection

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(b) is considered to be present at the meeting.

(d) The memoranda of the meeting prepared under IC 5-14-1.5-4 must state the name of:

- (1) each member who was physically present at the place where the meeting was conducted;
- (2) each member who participated in the meeting by using a means of communication described in subsection (b); and
- (3) each member who was absent.

SECTION 6. IC 20-12-61-5.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 5.5. (a)** This section applies to a meeting of the state board or a committee of the state board at which at least a quorum of the board or the committee is physically present at the place where the meeting is conducted.

(b) A member of the state board or a committee of the state board may participate in a meeting of the state board or a committee of the state board by using a means of communication that permits:

- (1) all other members participating in the meeting; and
- (2) all members of the public physically present at the place where the meeting is conducted;

to simultaneously communicate with each other during the meeting.

(c) A member who participates in a meeting under subsection (b) is considered to be present at the meeting.

(d) The memoranda of the meeting prepared under IC 5-14-1.5-4 must state the name of:

- (1) each member who was physically present at the place where the meeting was conducted;
- (2) each member who participated in the meeting by using a means of communication described in subsection (b); and
- (3) each member who was absent.

SECTION 7. IC 23-13-18-28 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 28. (a)** This section applies to a meeting of the board of trustees or a committee of the board of trustees at which at least a quorum of the board or the committee is physically present at the place where the meeting is conducted.

(b) A member of the board or a committee of the board may participate in a meeting of the board or the committee by using a means of communication that permits:

- (1) all other members participating in the meeting; and

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- 1 (2) all members of the public physically present at the place
2 where the meeting is conducted;
3 to simultaneously communicate with each other during the
4 meeting.
5 (c) A member who participates in a meeting under subsection
6 (b) is considered to be present at the meeting.
7 (d) The memoranda of the meeting prepared under
8 IC 5-14-1.5-4 must state the name of:
9 (1) each member who was physically present at the place
10 where the meeting was conducted;
11 (2) each member who participated in the meeting by using a
12 means of communication described in subsection (b); and
13 (3) each member who was absent.

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